



April 10, 2006

DGS/Procurement Division  
ATTN: Tim Patton  
707 3<sup>rd</sup> Street 2<sup>nd</sup> Floor (95605)  
PO Box 989054  
Sacramento CA 95798

RE: Sigarms Inc. Statement of Concern re Specifications of Invitation For Bid  
Solicitation # 55268

Dear Mr. Patton,

Sigarms Inc. is a manufacturer of firearms, including pistols. Sigarms has been in business since 1984, providing quality firearms to law enforcement agencies across the country and around the world, including the United States Secret Service, the Federal Air Marshals, the Department of Homeland Security, Dallas Police, San Francisco Police, and others. We supply the pistols issued in eighteen major State Police agencies, including Arizona, Massachusetts, Michigan, Nevada, North Carolina, New Jersey, Ohio, Oklahoma and Texas.

Sigarms recently became aware of an Invitation for Bid by the State of California Department of General Services (DGS), Procurement Division, on behalf of the California Highway Patrol (CHP) for the procurement of 9736 semi-automatic pistols. The Invitation For Bid is identified as Solicitation # 55268. Upon review, we noted that the solicitation expressly restricts the competition to one particular make and model of pistol – the Smith & Wesson Model 4006TSW. Pursuant to paragraph 12 of the solicitation's Bidder Instructions, Sigarms submits this statement of concern regarding what appear to be the unfairly and unduly restrictive specifications of the solicitation. Our concerns are both procedural and substantive.

#### Procedural Failures

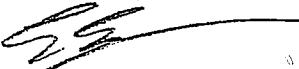
California Public Contract Code section 10301 requires generally that all contracts in excess of \$25,000 be awarded based on open competition. Section 10301 allows competition to be limited under certain conditions, including when the procuring agency and DGS agree that "an article of a specified brand or trade name is the only article that will properly meet the needs of the agency." In the absence of such a determination by DGS, DGS must solicit bids to furnish equivalent equipment made by other manufacturers. See 31 Cal. Op. Atty. Gen. 161, 162 (April 7, 1958). Limiting competition by designating a specific brand or model makes the procurement subject to the provisions regarding Non-Competitively Bid (NCB) Contracts in Chapter 5 of the State Purchasing Authority Manual (PAM). See PAM § 5.1.0. PAM section 5.2.0 requires that agencies desiring to enter into NCB contracts must submit to DGS an NCB justification form. Section 5.2.0 provides that DGS/PD is the review and approval authority for the NCB justification.

Remedy

The solicitation in question unfairly and unnecessarily restricts competition by designating a specific make and model pistol, thereby improperly and wastefully increasing procurement costs by nearly \$2 million. Sigarms Inc. respectfully requests that the solicitation be revoked, revised, and re-issued to eliminate the brand name restriction and provide more fair and open competition. This will allow Sigarms and other firearms suppliers and distributors to submit bids for automatic pistols that will meet all of CHP's substantive needs at lower costs to the State.

If given the chance through fair and open competition, Sigarms would be proud and honored to add the brave officers of the CHP to its long list of satisfied users of its quality firearms. We ask only to be given the chance to try.

Sincerely,



Eric Cook  
General Counsel  
Sigarms Inc.

cc: Mr. Ron Joseph  
Department of General Services  
PO Box 989052  
Sacramento CA 95798

Ms. Judy Heringer  
DGS/Procurement Division  
707 3<sup>rd</sup> Street 2<sup>nd</sup> Floor South  
West Sacramento CA 95605

Commissioner Michael Brown  
California Highway Patrol  
2555 First Avenue  
Sacramento, CA 95818

Senator Michael Machado – Chair  
California State Senate Budget and Fiscal Review Subcommittee #4  
State Capitol Room 5019  
Sacramento CA 95814

Governor Arnold Schwarzenegger  
State Capitol Building  
Sacramento CA 95814

Mr. R. E. Graswich  
Sacramento Bee Newspaper  
PO Box 15779  
Sacramento CA 95852

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I understand from telephone conversations with you that none of the requirements of PAM Chapter 5 have been met in this case. I understand that the procuring agency, the CHP, has not filled out and submitted the required NCB justification form and that DGS has not, therefore, performed its required function of reviewing the proposed justification and making a determination as to whether CHP's needs can only be met by limiting the competition to the particular make and model pistol listed in the IFB.

For reasons set forth below, if CHP had been required to provide NCB justification, and if DGS had performed its required review function, DGS would have determined that the make and model limitation in the IFB is unnecessarily restrictive and will result in waste of state monies.

### Substantive Unfairness and Waste

It has long been established in public government, as well as private business, that the most efficient way to ensure that funds are expended efficiently and fairly and to also ensure that the product or service received is the best possible for the money spent is to provide full and open competition in the procurement process. Indeed, our Governor in an executive order specifically recognized this important principle: "[O]pen and competitive bidding on state contracts ensures that state agencies and California taxpayers receive the best value for the goods and services purchased." Cal. Exec. Order D-55-02 (May 20, 2002). See also Pub. Contr. Code § 100.

Historically when governments or companies have not used the competitive bidding process, waste and corruption have often been the result.

In the case of the solicitation at hand, the California Highway Patrol (CHP) needs new pistols with which to equip its officers. The solicitation as it stands specifies that the gun provided be the Smith & Wesson 4006TSW. It also specifies that "for the purposes of this bid, only the specified brand and model will be accepted." The specifications detailed are the exact specifications of the S&W 4006TSW.

Sigarms Inc. offers for sale at least two models of automatic pistols that meet all the material specifications listed in the bid, except for the make and model restriction.


In addition to meeting all the material specifications, Sigarms' products will likely cost the state of California much less than will the Smith & Wesson products. Based on Sigarms' experience in, and understanding of, the pistol market, Sigarms expects that DGS will receive bids for the specified Smith and Wesson pistol in the range of \$800 per unit. The otherwise fully compliant pistols that Sigarms could offer (but for the unduly restrictive make and model restrictions in the IFB) would likely be bid around \$599 per unit. Accordingly, Sigarms estimates that the use of the unduly specific make and model restrictions in the solicitation will result in the state spending nearly \$2 million dollars more than it should to procure fully compliant pistols under the current solicitation.

Remedy

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